

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 28**

**PREMIER CM LLC d/b/a LEVEL CM**

**Employer**

**and**

**Case 28-RC-6735**

**OPERATIVE PLASTERERS & CEMENT  
MASONS INTERNATIONAL ASSOCIATION,  
LOCAL 797, AFL-CIO**

**Petitioner**

**DECISION AND ORDER**

Operative Plasterers & Cement Masons International Association, Local 797, AFL-CIO (the Petitioner) seeks an election in a unit comprised of all cement masons employed by Premier CM LLC d/b/a Level CM (the Employer). The unit sought by the Petitioner consists of the approximately 11 employees who hold the position of concrete finisher. The Employer contends that the appropriate unit must also include approximately 14 additional employees in the positions of field laborer, landscaper, and equipment operator. The Employer contends that these employees work as part of a “composite crew” with its concrete finishers and, as such, share a community of interest with concrete finishers and should be included in the unit. The Petitioner, on the other hand, contends that cement masons are a typical craft bargaining unit and should be recognized as such, even if they may, from time to time, work on a composite crew with members of other trades. The Petitioner has not indicated that it would proceed to an election in a unit other than the petitioned-for unit.

Based upon the reasons more fully set forth below, I find that the unit sought by the Petitioner limited to the Employer’s employees in the position of concrete finisher is not an appropriate unit for collective bargaining. I find instead that the Employer’s concrete finishers do not constitute a separate craft unit nor do they possess a separate, distinguishable community of interest from other of the Employer’s field employees, including its field laborers, landscapers, and equipment operators. Because the Petitioner has not indicated a willingness to proceed to an election in a unit other than the petitioned-for unit, I shall dismiss the petition.

## DECISION

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board (the Board). Upon the entire record in this proceeding, I find:

1. **Hearing and Procedures:** The Hearing Officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. **Jurisdiction:** The parties stipulated, the record establishes, and I find, that the Employer, a Nevada corporation with an office and place of business in Las Vegas, Nevada, is engaged as a general contractor in the building and construction industry. During the 12-month period ending August 25, 2010, the Employer, in conducting its business operations as described above, purchased and received goods and materials at its Las Vegas, Nevada facility valued in excess of \$50,000 directly from points located outside the State of Nevada. The Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and, therefore, the Board's asserting jurisdiction in this matter will accomplish the purposes of the Act.

3. **Labor Organization Status:** The parties stipulated, the record establishes, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent the employees of the Employer in the unit described in the petition.

4. **Statutory Question:** A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. **Unit Finding:** This case presents the issue of whether the cement masons petitioned for by the Petitioner constitute an appropriate unit, or whether the Employer's field laborers, landscapers, and equipment operators should be included in the unit based on a shared community of interest. As discussed more fully below, I conclude, based on the record before me, that the petitioned-for employees do not constitute an appropriate unit, but that they may only be included in an appropriate unit along with the Employer's other hourly employees, including field laborers, landscapers, and equipment operators. In this decision, I shall discuss the record facts concerning the Employer's operations and describe positions in dispute and their respective working conditions. I will then present the case law and the reasoning that support my conclusions.

### A. The Employer's Operations

#### 1. Organizational and Supervisory Structure

The Employer, which is based in Las Vegas, Nevada, is a construction company providing general contractor services on a 22-acre multi-use project in Las Vegas known as Tivoli Village. At the time of the hearing, the Employer employed 11 employees in the

position of concrete finisher, 8 employees in the position of field laborer, 3 employees in the position of landscaper, and 3 employees in the position of equipment operator.

Richmond Keliikoa is the Employer's General Superintendent and is responsible for overseeing the jobsite, including workers performing their daily job duties on the jobsite. Keliikoa has been employed by the Employer since August 1, 2010. The concrete finishers report to two leads, Carlos and Juan Magana, who have worked for the Employer since approximately mid-July 2010. Ultimately, the concrete finishers, including Carlos and Juan Magana, report to Keliikoa. The landscapers and equipment operators report to Don Richards, Director of Landscaping. The field laborers report to a foreman, Francisco Flores, and ultimately to Keliikoa.

## 2. Duties of Employees

The record establishes that the Employer gives its employees one of four distinct job classifications – concrete finisher, field laborer, landscaper, and equipment operator. The Employer does not have any written job descriptions for any of these positions, nor does the record establish that the Employer requires employees in these positions to have any special qualifications, training, or journeyman status.

Assignments for employees change on a daily basis depending on project schedules. The foremen, lead men, and Richards are responsible for preparing records of the tasks and duties performed by the employees they supervise, respectively, on a daily basis. The daily records are used to assemble a Field Laborer Log, which is a weekly log reflecting various job codes and the hours performed by each employee, regular and overtime, in a particular job code. Most of the time, the employees in the four job classifications at issue work on the same schedule. However, Keliikoa directs the employees under his supervision (field laborers and concrete finishers) with regard to what time and where to meet to begin work, and Richards does the same independently for the employees under his supervision (landscapers and equipment operators).

### a. Concrete Finishers

The record reflects that the job duties of concrete finishers typically including finishing concrete, which is leveling off the concrete surface with trowels and other finishing tools. Concrete finishers also use knee pads, skates, hand floats, edgers, hammers, chisels, and joiners to perform their job duties. Concrete finishers receive training on use of lifts. The hourly wages for the Employer's 11 concrete finishers range from \$16 to a high of \$20 for the two lead men.

### b. Field Laborers

The record reflects that the job duties of field laborers are typically to lay concrete, chip concrete, unload containers, perform general clean-up, and assist the other trades. Field laborers are trained in proper use of scaffolding, pneumatic tools, and the operation of lifts.

Field laborers have some of the tools that are used by the concrete finishers, such as hand floats. The hourly wages for the Employer's seven field laborers range from \$12.50 to \$18.

c. Landscapers

The record reflects that the job duties of landscapers are typically to plant trees and install irrigation lines. The hourly wages for the Employer's three landscapers range from \$18 to \$22.

d. Equipment Operators

The record reflects that the job duties of equipment operators are typically to prepare trenches and operate heavy equipment, including backhoes, loaders, cranes, and water trucks. Equipment operators are required to be certified to operate a backhoe, loader, and water truck, and they must carry a license to operate a crane. Equipment operators have some of the tools that are used by the concrete finishers, such as hand floats. The hourly wages for the Employer's three equipment operators range from \$14 to \$30.

3. Composite Crew

The record evidence shows that the Employer uses a "composite crew" comprised of individuals from various job backgrounds who can perform different tasks on a day-to-day basis. Composite crews are used to reduce costs on a construction project based on flexibility in scheduling and phasing. For example, based on a project's needs, there may be weeks during which there is no landscaping work to be performed, e.g., planting trees. Rather than have those employees designated as landscapers go without work for those weeks, the Employer uses its landscapers to perform other duties, including running backhoes, loaders, and dump trucks, and forming, stripping, placing, and finishing concrete curbs, sidewalks, and walls. Similarly, equipment operators also perform general labor work, place and finish concrete and cement, assist in setting up forms, and perform excavation work. Field laborers perform layout, help strip edges, clean up tools, help place and tamp concrete, and other tasks. The record establishes that all of the Employer's field employees are involved in all aspects of the project.

In addition, although, as described above, each job classification carries "standard" or "typical" duties normally associated with the particular job classification, including training and certification requirements, the evidence at hearing demonstrates that employees are cross-trained to perform the tasks of all of the job classifications. For example, landscape employees Juan Maldonado and Victor Maldonado are certified to operate every piece of equipment on the project with the exception of a crane. Similarly, all field employees, including field laborers, concrete finishers, landscapers, and equipment operators, are certified as a waterproofing installer. Field employees do not wear a particular uniform to work each day, but all employees wear construction boots, long pants, long shirts, hard hats, and safety glasses. All employees receive the same benefit package: five paid sick days a year, up to two weeks of paid vacation a year (depending on length of service), 401(k), and paid health insurance.

The record includes copies of the Employer's "Field Labor Logs," which are spreadsheets that break down the field employees' work performed during a particular week by description of work performed and cost code, for the period of May 29, 2010 through July 30, 2010. The Field Labor Logs are compiled based on daily information received from the leads, the supervisors, and the managers, and describe the work undertaken by each field employee on a weekly basis, including regular and overtime hours. Hours are tracked to a specific cost code that is assigned for a particular task or activity on the job or project. Cost codes are used to track actual as compared to estimated costs.

These logs demonstrate the nature and extent of the integration resulting from the Employer's practice of using composite crews. For example, the logs reflect that, for the week of July 24, 2010, 110 regular and 4.5 overtime hours of work were performed on "Off-site sidewalk." The logs further reflect that at least 24 of those hours were performed by field laborers, 32 of those hours were performed by concrete finishers, and 44.5 hours, including the 4.5 overtime hours, were performed by equipment operators. Similarly, the logs reflect that, for the week of July 17, 2010, 165 regular and 1 overtime hours of work were performed on "Irrigation On Grade Labor." Of those hours, at least 47 hours were performed by field laborers, 23 hours were performed by concrete finishers, 35 hours were performed by landscapers, and 29 hours were performed by equipment operators.

Similarly, the Field Labor Logs reflect that, during the week of July 3, 2010, approximately 110 hours of work were performed by 12 employees, including field laborers, landscapers, concrete finishers, and equipment operators, on pouring concrete for granite curbs. Additionally, during the week of July 10, 2010, employees in all four job classifications performed work on the concrete slab at the loading dock, and employees in three of the four job classifications performed work to place and finish concrete stairs. The Employer's logs for other weeks in June and July 2010, reflect similar allocations of hours performed in various job cost codes.

## **B. Legal Analysis and Determination**

The Board has long held that a "craft unit" consists of a distinct and homogenous group of skilled journeymen craftsmen who, together with helpers or apprentices, are primarily engaged in the performance of tasks which are not performed by other employees and which require the use of substantial craft skills and specialized tools and equipment. *Burns & Roe Services Corp.*, 313 NLRB 1307, 1308 (1994). In determining whether a petitioned-for craft unit is appropriate, the Board will examine: (1) whether the employees take part in a formal training or apprenticeship program; (2) whether the work is functionally integrated with the work of the excluded employees; (3) whether the duties of the petitioned-for employees overlap with the duties of the excluded employees; (4) whether the employer assigns work according to need rather than on craft or jurisdictional lines; and (5) whether the petitioned-for employees share common interests with other employees. *Id.* The Board also applies the traditional community-of-interest test to determine the appropriateness of units in the construction industry. Accordingly, in addition to the craft unit factors listed above, the Board will also inquire into: (1) similarity of skills, functions, and working conditions of the

employees; (2) central control of labor relations; (3) similarity in method of wages or compensation, hours of work, employment benefits, and supervision; (4) the degree of similar or dissimilar qualifications, training, and skills; (5) differences in job functions; (6) amount of working time spent away from the facility; and (6) integration of work functions. *Alley Drywall, Inc.*, 333 NLRB 1005, 1006 (2001).

An examination of these factors reveals that the Employer's concrete finishers do not constitute a craft unit and do not share a separate community of interest apart from the other field employees. Thus, I conclude that the petitioned-for unit is not an appropriate unit for bargaining for the following reasons. First, there is no record evidence that the Employer's concrete finishers are required to take part in any training or apprenticeship programs. While the Board has found that a lack of an apprenticeship program or formal training does not necessarily negate separate craft status, it has done so only when the employer requires employees to have extensive experience and no other class of employees has the same level of knowledge. *Burns & Roe*, 313 NLRB at 1308. These factors are not present here. To the contrary, the record is devoid of any evidence that the Employer requires its concrete finishers to have any particular licenses, certifications, or levels of experience to work in that position. The record evidence suggests that the Employer's concrete finishers are performing merely rudimentary concrete work, and not specialized work typically performed by craft cement masons. Further, the concrete work performed by other field employees suggests that these employees have similar levels of knowledge as employees working as concrete finishers.

Second, the record establishes that there exists significant overlap between the duties of concrete finishers and other field employees, with the Employer's assigning work and hiring employees based on need rather than on craft lines. Although employees may be hired based on a particular expertise in an area, employees are expected, and in fact do, assist with other duties and tasks as needed. As noted above, in the week of July 3, 2010, 12 employees, including field laborers, landscapers, concrete finishers, and equipment operators performed 110 hours of work pouring concrete for granite curbs. Similarly, during the week of July 10, 2010, employees in all four job classifications performed work on the concrete slab at the loading dock, and employees in three of the four job classifications performed work to place and finish concrete stairs. The record evidence reflects that all of the Employer's field workers, regardless of job title or classification, typically perform tasks and duties involving concrete.

Third, the record establishes a high degree of functional integration between employees in the petitioned-for unit and the other field employees. Although the record reflects that employees hold separate and distinct job titles, the evidence also shows that the Employer's employees work on the same job site, often on the same schedule; share many of the same job skills; work on the same tasks and duties, often assisting one another; use many of the same tools; and undergo much of the same training and certification.

Fourth, although the employees at issue report to different lead supervisors – the concrete finishers to Carlos and Juan Magana, the field laborers to Flores, and the equipment operators and landscapers to Richards – ultimately the Employer's General Superintendent, Keliikoa, assigns all employees their daily functions according to the jobsite schedule.

Moreover, the Board has long held that a difference in supervision does not necessarily mandate excluding differently supervised employees. See *Texas Empire Pipe Line Co.*, 88 NLRB 631, 632 (1950).

Fifth, the record evidence also reflects that all of the job classifications at issue encompass similar wage rates; in other words, the Employer's concrete finishers are not paid significantly more than the other employees at issue. The employees in the four job classifications at issue also receive the same benefits and generally wear the same attire, including safety equipment.

Given analogous facts and circumstances, the Board has previously concluded that a group of petitioned-for employees was functionally integrated with other employees such that a separate bargaining unit was inappropriate. For example, in *Brand Precision Services*, 313 NLRB 657 (1994), the petitioned-for operators did not have training, skills, supervision, or function distinct from the laborers and leadmen the petitioner sought to exclude, where all employees were required to have a drivers' license and the only additional requirement for operators was to have and maintain a commercial drivers' license. The Board found that the employer's work was highly integrated, and that there was constant contact among the petitioned-for operators and the disputed laborers and leadmen, where laborers spent up to 10 percent of their time performing operator work and operators' wages fell in the range between that of the leadmen and laborers. Similarly, in *Proctor & Gamble Paper Products*, 251 NLRB 492 (1980), the Board held that the petitioned-for electrical employees did not constitute a separate craft unit apart from other production employees where they spent at least half of their time working in functionally-integrated teams with the production employees, and a substantial amount of electrical work was performed by other employees. As in this case, the employer did not require its electrical employees to hold any special licenses or training.

In *Longcrier Co.*, 277 NLRB 570 (1985), the Board rejected the notion that employees who "happen to spend a majority of their time operating some type of construction equipment" constituted a separate appropriate bargaining unit, particularly when it would require the Board to "disregard the degree of common supervision by the project superintendent, as well as the overlapping duties and functional integration of the work performed by the petitioned-for employees with that of the remaining employees." Such is the case here. The requested unit would include those employees who happen to spend a majority of their time finishing concrete, but whose job functions also significantly overlap those of employees who are sought to be excluded. Because there is no evidence in the record that the employees at issue comprise a clearly identifiable and functionally-distinct group of employees, and that, in fact, the employees at issue perform similar job tasks side by side on the job site, I find that the Employer's field laborers, landscapers, and equipment operators share a community of interest with the petitioned-for employees such that the petitioned-for unit is not appropriate.

In sum, I conclude that the Employer's concrete finishers do not constitute a distinct and homogenous craft unit and do not enjoy a community of interest separate from the other field employees. I base my conclusions on the Employer's lack of any training or specific

experience requirements for the job of concrete finisher; the significant overlap of job duties and functions among concrete finishers and other field employees; the common interests among field employees as reflected by their common pay matrix and eligibility for the same benefits; and the functional integration between concrete finishers and other field employees as evidenced by their collaborative work on the Employer's job site. Although concrete finishers, together with field laborers, are separately supervised, the evidence reflects that all field employees share a degree of common supervision at the work assignment level. Therefore, I find this factor outweighed by the other factors noted above.

The Petitioner argues in its post-hearing brief that an expansion of the petitioned-for unit could contribute to labor unrest based on the fact that other unions typically represent employees in the job classifications of laborers, landscapers, and equipment operators. I reject this argument. First, there is nothing that would prohibit a union from representing employees in job classifications beyond the "typical" classifications it generally represents, particularly when those classifications are mere titles and do not necessarily reflect the daily job duties performed by those employees. Second, whether the Petitioner's representation of a unit of employees beyond the petitioned-for unit could or would contribute to labor unrest is merely speculative.

### **C. Conclusion**

Based on the foregoing, I find that the petitioned-for unit is not an appropriate unit for collective bargaining and that the only appropriate unit must include all of the Employer's field employees – concrete finishers, field laborers, landscapers, and equipment operators – based on a shared community of interest. Because the Petitioner has not indicated a willingness to proceed to an election in a unit other than the petitioned-for unit, the petition is hereby dismissed.

### **ORDER**

**IT IS HEREBY ORDERED** that the Petitioner in this matter be, and it hereby is, dismissed.



## RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14<sup>th</sup> Street, N.W., Washington, D.C., 20570. The Board in Washington must receive this request by the close of business at 5:00 p.m. (EST) on October 18, 2010. A copy of the request for review should also be served on the undersigned. The request may be filed electronically through E-Gov on the Board's website, [www.nlr.gov](http://www.nlr.gov),<sup>1</sup> but may not be filed by facsimile.

Dated at Phoenix, Arizona, this 4<sup>th</sup> day of October 2010.

/s/Cornele A. Overstreet

Cornele A. Overstreet, Regional Director  
National Labor Relations Board  
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<sup>1</sup> To file the request for review electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, [www.nlr.gov](http://www.nlr.gov).